

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LUIS RODRIGUEZ,	:	
Petitioner,	:	
	:	No. 1:17-cv-1852
v.	:	
	:	(Judge Rambo)
WARDEN BALTAZAR,	:	(Magistrate Judge Carlson)
Respondent	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This matter is before the Court pursuant to the February 19, 2019 Report and Recommendation (Doc. No. 16) of Magistrate Judge Carlson, recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. No. 1) filed by *pro se* Petitioner Luis Rodriguez (“Petitioner”) be dismissed for lack of jurisdiction and without prejudice to Petitioner’s right to seek leave to file a second or successive motion to vacate pursuant to 28 U.S.C. § 2255 from the United States Court of Appeals for the Fifth Circuit. Petitioner has objected, requesting that the Court transfer this matter to the Fifth Circuit for consideration. (Doc. No. 17.) Respondent filed a response to Petitioner’s objection, arguing that the Court should decline to transfer this matter. (Doc. No. 18.)

In considering whether to adopt the Report and Recommendation, the Court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b),

advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (explaining that judges should review dispositive legal issues raised by the report for clear error). In his petition, Petitioner asserts that he is actually innocent of some of the prior convictions that were used to enhance his sentence for being a felon in possession of firearms, in violation of 18 U.S.C. § 922(g), imposed by the United States District Court for the Western District of Texas. (Doc. No. 1.) In the Report and Recommendation, Magistrate Judge Carlson conclude that Petitioner could not pursue his claim for relief in a § 2241 petition pursuant to the “savings clause” of § 2255(e) and that his only avenue was to request leave to file a second or successive § 2255 motion from the Fifth Circuit. (Doc. No. 16.)

Following an independent review of the record, the Court is satisfied that Magistrate Judge Carlson’s Report and Recommendation contains no clear error, and will therefore adopt the Report and Recommendation. Moreover, because Petitioner’s § 2241 petition fails to meet the high standard for second or successive motions set forth in § 2255(h), the Court declines to transfer this action to the Fifth Circuit for consideration.

AND SO, on this 10th day of July 2019, upon consideration of the foregoing,
IT IS ORDERED THAT:

1. Magistrate Judge Carlson’s Report and Recommendation (Doc. No. 16) is **ADOPTED**;

2. Petitioner's objection (Doc. No. 17) is **OVERRULED**;
3. The petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. No. 1) is **DISMISSED** for lack of jurisdiction. This dismissal is **WITHOUT PREJUDICE** to Petitioner's right to seek leave from the Fifth Circuit to file a second or successive motion pursuant to 28 U.S.C. § 2255 to raise his claim for relief; and
4. The Clerk of Court is directed to **CLOSE** the above-captioned case.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge